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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,314	07/30/2003	Shalaby W. Shalaby	SHA-26-DIV3	9108
29698	7590	05/06/2005		
LEIGH P. GREGORY ATTORNEY AT LAW PO BOX 168 CLEMSON, SC 29633-0168				
			EXAMINER HAMPTON HIGHTOWER, PATRICIA	
			ART UNIT 1711	PAPER NUMBER

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,314

Applicant(s)

SHALABY

Examiner

Patricia Hightower

Art Unit

1711

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/30/03; 11/10/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other _____

Information Disclosure Statement

The information disclosure statement filed July 30, 2003 has been considered and has been made of record. The information disclosure statement filed November 10, 2003 is a duplicate of the IDS filed July 30, 2003 and therefore the references have been lined through because they are duplicate citations.

Response to Amendment

The preliminary amendment filed July 30, 2003 in which the applicants requested that claims 1-8 be withdrawn from consideration is acknowledged. Said claims 1-8 have been withdrawn from consideration and claims 9-17 will receive an action on the merits.

Obviousness-type Double Patenting Rejection

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 9-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No.

6,794,485. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instantly claimed ***device for sealing a puncture***

in a blood vessel having a first and second flexible sealing member comprising an absorbable polymer, crystalline, monocentric, polyaxial copolymer, and elongated member comprising a composite comprising a flexible sheath (the sheath comprises a braided suture) and a less flexible solid, monofilament core, the less flexible core within the sheath comprising the enlarged cross-sectional diameter of the distal locking portion of the elongated member composite and the less flexible filament is threaded through the interior portion of the suture; is viewed as not being patentably distinct from the US 6,794,485 patent's medical device made from an adsorbable, crystalline, monocentric, polyaxial copolymer comprising at least three axes originating and extending outwardly from the center of the copolymer, wherein the device is adapted for sealing a puncture in a blood vessel and comprising a first sealing member adapted to be positioned against an inner surface of a blood, a second sealing member adapted to be positioned against an outer surface of a blood vessel and are viewed as claiming overlapping subject matter.

Prior Art


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These references are cited to show the state of the art of absorbable, biosorbable (co)polymers and use in medical devices; Lafontaine, Mares and Sauer and Shalaby.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Hightower whose telephone number is (571) 272-1073. The examiner can normally be reached on M-F from 9:30 A.M. - 6:00 P.M.

Art Unit: 1711

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


P. Hampton Hightower
Primary Examiner
Art Unit 1711

P. Hightower:ph
April 30, 2005